

Remarks/Arguments

Reconsideration of this application in light of the above amendments and the following remarks is requested.

Claims 1 and 10 have been amended, claims 15-18 have been added, and claims 2-9, and 11-14 have been maintained in their current form.

Rejections under 35 U.S.C. § 112

Claims 1-9 were rejected under 35 U.S.C. §112 as being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as his invention. Independent claim 1 has been amended in light of the Examiner's comments.

The Examiner has rejected claim 9, stating that the term "reinforced sheet" is indefinite and unclear. It is noted in paragraph 2 of the disclosure that, "PTFE material can exhibit different shapes, for example, a foil, sheet or cube." The specification goes on to state in paragraph 12 that, "[t]he preferred invention may be constructed in a variety of shapes and sizes, with or without the reinforcing wrapping as specific needs dictates." Thus, Applicant respectfully submits that claim 9 is in compliance with the requirements of 35 U.S.C. §112. Therefore claims 1-9 should be in condition to overcome the §112 rejection.

Rejections Under 35 U.S.C. §102 and §103

Claims 1-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by admitted prior art or, alternatively, under 35 U.S.C § 103(a) as being obvious over admitted prior art, specifically, DE 690 03 879.

The PTO provides in MPEP § 2131 that, "[t]o anticipate a claim, the reference must teach every element of the claim...." Therefore, with respect to claim 1, to support a rejection under 35 U.S.C. §102(b), DE 690 03 879 must contain all of the elements of claim 1.

Examiner relies on the background section of the application to assert that DE 690 03 879 teaches, "[t]he size of the pores of the PTFE-material can be varied by

changing the mixture of the mixing ratio ...” However, the DE 690 03 879 reference states that, “an object of the present invention is to provide a PTFE porous material having a high void content and a large average pore diameter,” column 3, lines 3-5. Applicant respectfully submits that the change from one average pore size to another average pore size does not teach or suggest, “[a]n article of expanded PTFE exhibiting a fibril and node structure comprising two distinct pore size distributions, one within another, wherein a first pore size distribution comprises smaller pore sizes than a second pore size distribution and the pores of the smaller pore size distribution are randomly distributed within the pores of the larger pore size distribution...” as is claimed in claim 1. Thus, the Examiner has failed to find each and every element of the claim in the cited reference and the U.S.C. §102(b) rejection cannot be sustained.

Alternatively, to support a rejection under 35 U.S.C. §103(a), as the PTO recognizes in MPEP § 2142, “... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...” 35 U.S.C. 103 provides that, “A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention...” Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated.

Here again the Examiner relies on the background section of the present application referencing DE 690 03 879 and stating, “[t]he size of the pores of the PTFE-material can be varied by changing the mixture of the mixing ratio ...” As stated previously, the change from one average pore size to another average pore size does not teach or suggest, “[a]n article of expanded PTFE exhibiting a fibril and node structure comprising two distinct pore size distributions, one within another, wherein a first pore size distribution comprises smaller pore sizes than a second pore size distribution and the pores of the smaller pore size distribution are randomly distributed within the pores of the larger pore size distribution...” as is claimed in claim 1. Hence, the Examiner has failed to establish a prima facie case of obviousness with respect to claim 1.

Claims 2-9, and new claim 16, depend from and further limit claim 1 and should be allowable as well. Claims 10-14 and new claim 15 recite a method of manufacture of the article of claim 1 and should therefore be allowable for, at least, the same reasons as claim 1.

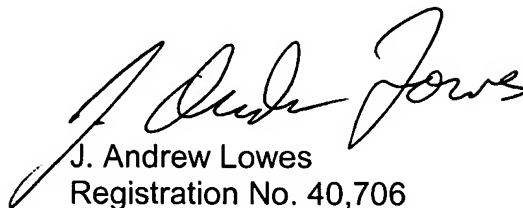
New independent claim 17 and dependent claim 18 have been added and also overcome the deficiencies asserted against the existing claims. Claims 17-18 should therefore also be in condition for allowance.

Conclusion

It is clear from all of the foregoing that independent claims 1, 10, and 17 are in condition for allowance as are dependent claims 2-9, 11-16, and 18.

Notice of allowance of all claims is requested.

Respectfully submitted,


J. Andrew Lowes
Registration No. 40,706

Dated: 2/19/04

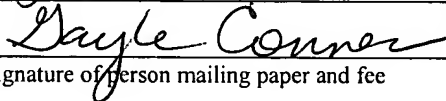
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 214/739-7557
File: 34567.3

r-67523.1

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on

2-20-04


Signature of person mailing paper and fee